

Counsel listed on next pages

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Philip Wong, Frederic Chaussy, and Leslie
Marie Shearn, individually, on behalf of all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

vs.

HSBC Mortgage Corporation (USA);
HSBC Bank USA, N.A.; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 3:07-cv-2446 MMC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF JOINT
MOTION TO EXTEND EARLY
NEUTRAL EVALUATION DEADLINE**

Date:	January 30, 2008
Judge:	Hon. Maxine M. Chesney
Complaint Filed:	June 29, 2007 (Amended)
Trial Date:	None Yet Set

1 Donald H. Nichols, MN State Bar No. 78918
2 (admitted **pro hac vice**)
3 Paul J. Lukas, MN State Bar No. 22084X
4 (admitted **pro hac vice**)
5 Tim C. Selander, MN Bar No. 0387016
6 (admitted **pro hac vice**)
7 NICHOLS KASTER & ANDERSON, PLLP
8 4600 IDS Center
9 80 S. 8th Street
10 Minneapolis, MN 55402
11 Email: nichols@nka.com, lukas@nka.com, selander@nka.com

12 Bryan J. Schwartz, CA State Bar No. 209903
13 Matthew C. Helland, CA State Bar No. 250451
14 NICHOLS KASTER & ANDERSON, LLP
15 One Embarcadero Center, Ste. 720
16 San Francisco, CA 94111
17 schwartz@nka.com, helland@nka.com

18 Attorneys for Individual and Representative Plaintiffs

19 George J. Tichy, II, CA Bar No. 041146
20 Michelle R. Barrett, CA Bar No. 197280
21 Kimberly L. Owens, CA Bar No. 233185
22 Justin T. Curley, CA Bar No. 233287
23 LITTLER MENDELSON
24 A Professional Corporation
25 650 California Street, 20th Floor
26 San Francisco, CA 94108.2693
27 Telephone: 415.433.1940
28 Facsimile: 415.399.8490
E-mail: gtichy@littler.com, mbarrett@littler.com,
kowens@littler.com, jcurley@littler.com

Attorneys for Defendants
HSBC MORTGAGE CORPORATION (USA) and
HSBC BANK USA, N.A.

1 Plaintiffs Philip Wong, Frederic Chaussy, and Leslie Marie Shearn (collectively
2 referred to as "Plaintiffs") and Defendants HSBC Mortgage Corporation (USA) and HSBC Bank
3 USA, N.A. (collectively referred to as "Defendants") jointly submit this Motion requesting to
4 extend the January 31, 2008 deadline set by the Court for conducting an Early Neutral Evaluation
5 ("ENE") of this case. This motion is submitted pursuant to Northern District of California Local
6 Alternative Dispute Resolution Rule 5-5,¹ Civil Local Rule 7-11, and Civil Local Rule 7-12.

7 **I. ARGUMENT**

8 **A. Details Supporting the Parties' Request.**

9 On or about August 24, 2007, the Court ordered the parties to participate in ENE
10 through its Alternative Dispute Resolution program. Thereafter, Roderick P. Bushnell was
11 assigned as the Early Neutral Evaluator (hereinafter "Evaluator Bushnell") in the matter.
12 Pursuant to Evaluator Bushnell's request, the parties participated in a conference call to discuss
13 ENE and the scheduling of an ENE session. During that call, the parties discussed that it would
14 be most appropriate to conduct an ENE after the parties had had the opportunity to conduct some
15 discovery in the matter. Further, the parties also discussed the fact that Defendants intended to
16 raise a number of exemptions from overtime as defenses to Plaintiffs' claims. Moreover,
17 Plaintiffs discussed their intent to pursue conditional certification of the putative class under the
18 Fair Labor Standards Act ("FLSA") claims. Given the potential complexity of issues and both
19 Plaintiffs' and Defendants' intentions, the parties agreed during the conference call that it would
20 be appropriate to engage in discovery before engaging in ENE. During this call, Evaluator
21 Bushnell concurred with the parties, as ENE will involve evaluation of claims and defenses. As a
22 result, the parties scheduled an ENE for January 9, 2008.

23 In late December 2007, Plaintiffs filed a motion seeking conditional certification
24 of putative class members in one of the two represented job classifications. On or about

25 ¹ The parties acknowledge that ADR Local Rule 5-5(a) states that a Motion must be made 15 days
26 prior to the date upon which the session is to be held. Unfortunately, due to the holidays, the
27 parties were not able to reach Evaluator Bushnell and reach resolution on extending the ENE date
28 until January 8, 2008. Thereafter, pre-scheduled depositions and motion practice in this case,
along with the defense counsel's illness and Plaintiffs' counsel family obligations, prevented the
filing of this request earlier. The parties apologize to the Court for the delay in filing this request.

1 January 3, 2008, after discussions regarding the timing of the motion, the parties agreed for
2 Plaintiffs' motion to be heard on February 8, 2008. Further, the parties agreed that: (1) further
3 discovery needed to be conducted and (2) the motion for conditional certification should be heard
4 prior to participating in an ENE. As a result, the parties contacted Evaluator Bushnell via
5 electronic mail to determine if Evaluator Bushnell agreed. Upon consultation, Evaluator Bushnell
6 agreed and the parties agreed to set ENE for April 1, 2008. The parties believe that this April 1
7 date will allow the parties to conduct additional discovery, as well as to potentially receive a
8 ruling from the Court on Plaintiff's motion for conditional certification—information about which
9 can be included in the parties' ENE statements to Evaluator Bushnell. As a result, the parties
10 mutually request that the Court extend the deadline for conducting ENE until April 30, 2008.
11 This extended deadline will allow the parties to engage in a meaningful ENE process and to
12 resolve any unanticipated scheduling conflicts that may arise immediately prior to April 1.

13 **B. The Parties' Concurrence Regarding the Request.**

14 The parties have agreed that an extension to the ENE deadline is in both parties'
15 interests, so that the ENE process can be more meaningful. Thus, the parties are jointly
16 submitting this request.

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 **II. CONCLUSION**

2 Based on the foregoing, Plaintiffs and Defendants jointly and respectfully request
3 that the Court grant their request to extend the deadline for conducting ENE from January 31,
4 2008 until April 30, 2008.

5 Dated: January 30, 2008

6 NICHOLS KASTER & ANDERSON, LLP

7
8 By: _____/s/
9 PAUL J. LUKAS
10 Attorneys for Plaintiffs and Representative Plaintiffs

11 Dated: January 30, 2008

12 LITTLER MENDELSON, PC

13
14 By: _____/s/
15 MICHELLE R. BARRETT
16 Attorneys for Defendants